

INDEX

Surnames starting with al- are alphabetized by the subsequent part of the name.

Abboud, Ibrahim, 85, 94, 94n20, 101, 159
Adlan, Mohammed, 100–1
Adlan (Mohammed) v. Sudan Government, et
al. (1956), 100–1, 103
Advisory Council for Northern Sudan
(colonial era), 80
Advocacy Act (1983), amended under Bashir,
128
African Union, 129, 166t

ajaweed (older persons as mediators), 19 alcohol-related offenses, 113n89, 114, 127, 127n18, 148, 150 Alier, Abel, 106n68 American University of Cairo, 40

American University of Cairo, 40 Anglo-Egyptian rule. See colonial era Ansar religious sect, 91, 92t, 102 apostasy, crime of, 37n43, 113n89, 115–16, 126–7, 196

appeals: in colonial era, 57–8, 59, 71; Constitutional Court, no appeal from decisions of, 130. See also High Court

Arabic language: author conducting research in, 40; Awadalla's resignation letter in, 103; Bashir's adoption of Arabic-only policies in education and government, 127; Cairo University-Khartoum branch teaching in, 100, 126; colonial *qadis* using in *shari'a* courts, 65; laws translated into, under Nimeiri, 112; lawyers' knowledge of, 123; legal education using,

136; SPS testing in, 54; translation of Sudanese law into, 112

Archer, Geoffrey, 62

authoritarian rule (generally): expansion of legal institutions under, 11; law-based strategies of, xiii, 4, 7, 8t, 9–10, 26–7, 218; overview, 16; violating human rights, 25, 191. See also legitimacy

authoritarian rule in Sudan (1989–2011), 119–54; benefiting from religious view of God's will, 187–8; dangers of rights-based expression in, 163, 183–7, 193–5, 209; law-based strategies of, 206; and legal politics, 25, 121, 203. See also al-Bashir, Omar Hassan

Awadalla, Babiker: on Abboud regime, 101, 124; as Chief Justice, 103–10, 106n67; legal education of, 73; and legal system reform, 117, 213, 217; and military coup (1969), 215, 224; political agenda of, 117, 118, 224; as speaker of parliament, 92–3

al-Azhari, Ismael, 86, 92

al-Bahiri, Zaki, 92n13

bar association: adequate training to function at time of Sudan's independence, 95–6; under Bashir, 121–31, 217; categorized as trade union, 128; division created between older and younger lawyers, 143;



INDEX

politics of, 224-5; professionalism and entitlement of, 122. See also legal al-Bashir, Omar Hassan: controlling the bar association, 121-31, 213; controlling the judiciary, 131-4, 213; expanding courts (tagsir al-zhul al-gada'i), 120, 143-44n59, 143-50, 144f; God's will manifested in rule of, 150, 196; intention to step down, 153; Islamization of law by, 126-7, 150; legal education reform under, 131, 134-43; legal system under, 11, 100n50, 120, 121, 150-4, 213, 221; longevity of regime of, 151, 203, 218, 230; monitoring of civil society workers, 161, 191-2; not affected by charges of human rights abuses, 196-7; peace accords under, xi, xiv, 154, 182, 215–16; portraying himself as benevolent ruler, 218; possible collapse of regime of, 153; ratification of major UN conventions and covenants, 182; as self-proclaimed leader, 117, 119; vice president under, 106n68 "benevolent despotism" of colonial era, 53-8,

fraud in election of bar leaders, 128-9;

119, 212

bin Abd Allah, Muhammad Ahmad (al-Mahdi), 52

"blood-price" (diyya), 69

Bonham-Carter, Edgar, 56, 63, 211

Bosnia-Herzegovina, legal politics in, 220-1

bottom-up change, 4, 201

British colonialism. See colonial era

British common law, 22, 57, 87, 89, 98-9, 138, 213

British history, relationship between law and society in, 48n9, 219, 229-30

British Labour Party and trade unions in colonies, 79

Brunyate, William (W. E.), 59

Building Authority of Khartoum v. Evangellos Evangelledes (1958), 101

"building of impartiality" (mabna al-haqaniyya), 64 Burr, J. Millard, 120

Cairo University-Khartoum branch, 100, 108-9, 109n78, 126

capacity building and the law, 4, 10. See also courts; legal education; legal politics

capacity building of humanitarian agencies, 164

Center for Systemic Peace rankings of state fragility, 2n2

Chanock, Martin, 44

Chiefs' Courts Ordinance (1931), 70

Chile, 216

China, 30, 197

Christianity in Sudan: missionaries, 35n38, 70, 94n20, 159; in pre-colonial period, 51n19; in southern Sudan, 34, 34n37, 70,94n20

civic organizations in Sudan, 160-1 Civil Justice Ordinance (1929), 99, 99n40 civil law. See Egyptian civil law; legal department

Civil Procedure Act, Article 83, 146 civil procedure, code of, 107, 113

civil society. See humanitarian actors; rights-based approach to development Civil Transactions Act (1984), 113

civil war: in Abboud regime, 94; duration of, 1-2, 32-3, 36; first war ending (1972), 106, 108, 218; second war ending (2005), xiii, xvi, 106n68, 218; second war starting (1983), 111-12. See also peace accords

Collins, Robert O., 108, 120

colonial era, 16, 44-84; acceptance of British norms during, 11, 35, 46, 57, 57n42, 59, 69; and administrative class positions, 68n80; aid actors and authoritarian actors viewing as evil, 25; Anglo-Egyptian rule, 35; appeals in, 57-8, 59, 71; "benevolent despotism" of, 53-8, 119, 212; British settlers with separate set of laws, 47; claim making in, 63-4, 71, 217; courts' caseload in, 75-6, 75n110, 77f; criminal code, adoption of, 49, 51, 77; criminal prosecutions in, 59–60, 61f, 216; district commissioners in, 63-4, 71; elites in, 54, 213, 225; and facilitation of economic development, 50, 59-63; indirect rule and co-optation of customary law, 67-72; land rights in, 62-3; law-based strategies of, xii-xiii, 8t, 9, 26, 221, 224; legacy of, 84, 88-9, 156; legal department of, 56-7, 56t, 57f, 62-6; legal education of sheikhs in, 72-4; legal pluralism in, 70, 84; and legal politics, 7, 25, 45, 51–74, 80, 119; legal system legitimizing, 47, 48, 50-1, 68; legal system used to combat, 75-81; multiple legal systems combined in, 84;



INDEX

and native administration, 68-9, 76; oppression of local movements in, 49; ordinances, promulgation of, 47, 55, 59, 63, 78, 215; overview, 35; paternalism of, 83; rule of law in, 11, 44, 46, 47, 53, 59, 75, 82, 211–12; and shari'a, 56–7, 57f; and social stability, 48-9, 59-63, 75, 83. See also Sudan Political Service (SPS) common law: attempt to replace with Egyptian civil law, 102, 107, 217; as British legacy, 98-100, 118, 131, 213; gutting under Bashir, 127-8, 132-3, 138; reinstatement as basis of Sudanese law, 108. See also British common law Communist Party, 91, 92n13, 102-4, 215 comparative studies of legal politics, 31, complaints against government officials: Bashir permitting to show benevolence, 215, 217-18; in colonial era, 63-4, 71, 217; paradox of helping regime's power and not the people, 9; Public Grievances and Corrections Board, 146-7, 218 Comprehensive Peace Agreement (2005).

See peace accords
Condominium Agreement (1899), 53
conflict states. See failed states; fragile states
constitution of Sudan: 1953 Transitional
Constitution, 89, 96; 1956 Transitional
Constitution, 103; 1973 Permanent
Constitution, 108; 1998 Permanent
Constitution, 129; 2005 Interim

172, 182, 215, 218; due process clause, 101n52; regimes manipulating, 85, 86 Constitutional Court of Sudan, 129, 130, 171, 172, 205

National Constitution, 37n43, 171n31,

constitutional courts, independence of, 30 contract law: civil code redrafted in Egyptian style, 107; lawyers drafting contracts, 146 Convention on the Rights of the Child, 182 corporal punishment, 113–15, 113n89, 127, 127n18, 148, 203, 217

corruption, 52, 52n24

coups. See revolts and coups courts: access of citizenry to, 5, 9, 148, 186; alternative remedies preferred to filing in, 195; caseloads, 75–6, 75n110, 77f, 148–9, 149f, 218; Chiefs' Courts Ordinance (1931), 70; in colonial era, 51, 55–6, 58, 58n48, 60n55, 71, 75–6; expansion under Bashir (tagsir al-zhul al-qada'i),

120, 143–44n59, 143–50, 144f; in first period (1956–64), 94–102; independence of, 64, 76, 84, 89, 95, 96; internationally funded judicial-training programs, 171–3; judiciary overhaul under Bashir, 131–4; loss of independence of, 132–3; during Mahdiyya, 53n27; as manifestation of legal order, 31; number of and types of, 39, 147–8, 148f, 217; as political actors, 28, 28n19; in second period (1965–76), 105; speed of judicial administration, 152; state leaders investing power in, 29; Sudanese using to combat colonialism, 80–1. See also common law; Islamic law

criminal law: under Bashir, 126, 147–8, 217; convictions in colonial era, 60, 61f, 216; creating sense of order, 51, 216–17; in first period (1956–64), 98; local enforcement in colonial era, 68; Mahakim al-Jana'iyya al-Sha'abiyya (People's Criminal Courts), 148n70; under Nimeiri, 65n75; sheikhs' judicial power over, 70; summary adjudications of criminal cases, 148; suppression of opposition through, 49, 77, 80–1, 147–50, 212, 216–17. See also Penal

Criminal Procedure, Code of (colonial era), 59 cultural differences. See ethnocultural mix in Sudan

culture of commodification, 194–5 Cummings, Charles, 83 currency: exchange rates, 111, 111n82; possession of foreign currency as crime, 134 customary law, 36, 38, 38n45, 49, 69 customs (urf) of Maliki school, 51

Dar al-Watha'iq (National Records Office, Egypt), 40

Darfur: criminal laws enforced in, 150; famine, aid for relief from, 161; history of Darfur sultanate, 35, 35n40; incorporation into Anglo-Egyptian Sudan, 76; international aid groups expelled from, 193; "Justice and Confidence Centers" in, 176–7; natural disasters in, 160

Darfur conflict: displaced persons from, xiii, 156, 202; as first global humanitarian crisis of 21st century, 33, 36, 164; massacres or genocide, 33, 196, 213; war crimes, courts for, 129



INDEX

Davies, W. E. D., 157 death penalty, 69-70 Defense Force, 79 Definition of "Sudanese" Ordinance (1948), 78, 78n117 democracy in Sudan, 15, 101-2, 115-16, 152_3 democratic states and legal politics, 214 Democratic Unionists, 85-6, 102, 112, 117 Digest of the Decisions of the Court of Appeal of the Sudan, 157 dignity of the person, 184, 228 displaced persons: and end of civil war, 33; government relieved of financial burden of due to international aid agencies, 206; human rights education of, xii, 11, 27, 42, 173-4; interviews conducted by author with, 40, 236, 238-47; monitoring of, 203-4; pluralism preventing banding into cohesive unit, 201–2; subjugation through criminal law enforcement, 147-50; Sudanese population of, xiii, xiiin4, 1, 227; symbolic benefits of law-building programs for, 12-13, 207, 209; women's plight, 194-5. See also Darfur conflict divorce, 65, 148, 199 diyya ("blood-price"), 69 Durham University's Sudan Archive (England), 39 duties created by religious and social relationships, 188

economic development: in colonial era, 50, 59–63; foreign investment in Sudan, 197; lawyers' role in shaping, *158n7*; in Nimeiri regime, 108, 110–11; and oil industry, 151, 153, 197

education: under colonialism, 74, 74n106; higher education under Bashir, 135, 136n44; rights-based development programs providing basic education, 198, 207; U.S. sanctions against Sudan, effect on, 163. See also legal education

Egypt: Arab Spring revolt in (2011), 153–4; in contention with Britain over independent Sudan, 89–90, 226; Nasser's proposed unity with Sudan, 107–8; Sudanese civil society in, 162; Sudanese disagreeing over annexation to, 91–2; Supreme Constitutional Court in, 30. See also colonial era

Egyptian civil law: Awadalla's view of Sudanese version of, 109; as lasting influence on Sudanese law, 108–9, 109n78; Nimeiri's overhaul of Sudan's legal system to adopt, 102, 107, 217; Sudan's resistance to, 88–9; transition back to common law, 108 El Tahir, Ahmed, 95, 95n23

Elbushi, Mudathir, 97

elites: benefiting from humanitarian actors, 198, 207n67, 208, 225; benefiting from legal institutions, 6, 9; in colonial era, 54, 213, 225; division created by legal education, 100, 100n50; education in rule of law, 46; English-speaking Sudanese employed by humanitarian agencies, 168; entry into legal profession no longer appealing to, 153; entry into legal profession restricted to, 122; in Khartoum administration as facilitators of colonialism, 73n100; knowledgeable across multiple legal systems, 12, 96; law-based strategies of, 8t,

empowerment of oppressed, 10, 12, 42, 170, 173, 182, 190–1, 198

and emerging democracies, 29

10, 12, 222-3; repression of, 49; in weak

English language: dearth of English-language scholarly materials available to legal community, 135, 135n42; higher education using, 136n46; as language of human rights, 39, 227; as language of professionals, 123; law schools teaching in, 122, 136; need for lawyers to know, 138, 227; negative effects from reducing knowledge of, 139, 151, 226–7; in South Sudan legal system, 152

environmental impact assessment, NGOs seeking to force government to conduct, 204–5

Ethiopia, law-and-development interventions in, 159n10

ethnocultural mix in Sudan: aid community ignoring, 207; as factor in preventing banding into cohesive unit, 201–2, 209; history of, 34–5; and legal profession, 41; maintaining peace during colonial era, 55, 55n35

European Union, 166t exiled Sudanese activists, 162 expanding courts under Bashir (taqsir al-zhul al-qada'i), 120, 143–44n59, 143–50, 144f expulsion of foreign aid groups, 193



INDEX

failed states: fallacy of legal vacuum in, 4, 164, 227; Fund for Peace on, 2n2; legal order in, xiii, 4; Somalia as, 221; Sudan as, 2, 2n2. See also fragile states Failed States Index (2012), 2n2 family law, 65. See also divorce first period of independent Sudan (1956-64), 88–102; Abboud regime, 85, 94, 101; adequate training for legal system to function, 95-6; civil service posts in, 93; democracy during, 101-2; foreign intervention's focus in, 156; inadequate training for self-government, 91; initial lack of legislation, 93-4; legacy from colonial era, 84, 88-9, 156; legal structure in, 94–102; overview, 87; parliamentary system, 93-4; political parties in, 91, 92n13; separation of shari'a from civil law, 97; Sudanization of government, 89-91 Ford Foundation, 158-9, 159n10, 161 Foreign Policy on "failed" states, 2n2 fragile states: akin to colonial states, 212; law

Foreign Policy on "failed" states, 2n2 fragile states: akin to colonial states, 212; law not absent in, 26, 146, 214, 227; legal tools and strategies in, xiii, 3–5, 13, 20, 27–31, 226; limited knowledge of how law-based strategies are used in, 31; lived experience of the law in, 19–20, 28 "framing and shaming" practices of activists,

Freedom House rankings of countries for political rights and civil liberties, 2n2 Fund for Peace on "failed" states, 2n2

184-5

Garang, John, 106n68 genocide, 33, 196 Gezira Scheme, 50, 111 "Global Knowledge Transfer" project, 172 God's will, 150, 187–8, 196 Gordon College Sheikhs' School, 72, 98, 156 government-oriented NGOs (GONGOs), 168, 192

grassroots empowerment, 10, 12, 170, 173, 176 grievance processing. See complaints against government officials

hadith (Prophet Muhammad's tenets), 128 Hamadien, Brigadier, 125 Hanafi school of Islamic law, 52, 126 Harding, Alan, 48n9 Hawai'i, colonial law in, 50 Hawley, Donald, 44, 45n1, 58, 59, 157 Hay, Douglas, 127, 219 Hemment, Julie, 220 High Court: in colonial era, 56, 83; judicial review, power of, 100-1; Nimeiri's removal of members of, 105, 106; precedents applied by, 98-9; refusal of parliament to implement order (1966-7), 102, 103-4, 215; reporting of decisions of, 100, 159; Taha case, 116 homicide cases, 69-70 huduud punishment. See corporal punishment human dignity. See dignity of the person human rights: authoritarian regimes in violation of, 25, 191; detachment of, from daily reality, 184-7, 204, 222; educating oppressed persons about, xiv, 4, 11, 27, 42, 170–1; grassroots legal culture of, 10, 12, 170, 173; and intimidation by government, 193; against Islamic concepts, 129; NGOs framing programs in language of to obtain funding, 201; not viewed as guaranteed in Sudan, 188-9; research on civil society actors' knowledge of, 42; scope of, 183; serving the powerful, 207n67, 228; success of humanitarian interventions aimed at promoting, 156, 190; Sudan Human Rights Organization, 124; Sudanese civil society in Cairo focusing on, 162; theory of transformative rights, 189–90; UN emphasis in postconflict Sudan on, xiv, 39, 168-79; victimhood posture necessary to fight for, 189-90. See also humanitarian legal politics; rights-based approach to development

humanitarian actors, 17, 155-80; Bashir allowing due to unlikelihood of raising opposition, 192-4, 202; government-oriented NGOs (GONGOs), 168, 192; harassment and banning of international workers, 193, 193n35; history of legal development initiatives, 156-64; information from, as self-serving, 32; international aid groups in Sudan (by type), 166, 166t; as justice activists, 161-2, 179; lack of meaningful dialogue with, 205-6; law-based strategies of, 8t, 9; and lawyers, 224-5; legal awareness workshops conducted by, xi, 173-4, 198-200; networks of NGOs, 167-8, 167n23; non-Sudanese personnel making strategic, budgetary, and policy decisions



INDEX

in aid agencies, 178-9; promoting human rights, 6, 9-10, 156, 183, 190; research on, 41-2; success of interventions aimed at promoting human rights, 156, 190; Sudanese civil society, 164-8; as targets of Bashir regime, 163, 183. See also humanitarian legal politics; international aid; rights-based approach to development

Humanitarian Aid Commission (HAC), 164-5, 164n19

humanitarian legal politics: civil society actors' use of, 7; defined, 25; "framing and shaming" model, 184-5; impacts of, 182, 198-206, 203t, 210; situational constraints on, 183-97, 213-14. See also human rights; rights-based approach to development

imprisonment of lawyers who protested under Bashir, 125

independence from colonial rule, 11, 32, 35, 60, 76-7, 213; nationalism leading to, 78-81. See also first period of independent Sudan (1956-64)

India, 47, 79, 197 indirect rule, 67-72

inheritance, 65

intellectual property law, 145, 145n62

international aid: empowerment goals of, 12; framing programs in rights-based language to obtain funding from, 201; government relieved of financial burden of due to work of, 206; groups in Sudan (by type), 166, 166t; law as focus of, 3; non-Sudanese personnel making strategic, budgetary, and policy decisions in aid agencies, 178-9; from OECD countries, 3. See also humanitarian actors: United Nations: World Bank

International Covenant on Civil and Political Rights, 182

International Covenant on Economic, Social, and Cultural Rights, 182 International Criminal Court (ICC), 193,

196 international law, 10, 25, 107

International Monetary Fund, 111, 113 interviews conducted by author, 40, 236, 238-47

intifada overthrowing Nimeiri, 115-16

Islamic law: apostasy as crime under, 37n43, 113n89, 115-16, 126-7, 196; bar association embracing under Bashir, 128-31; in colonial era, 52, 56-7, 57f, 64-7, 76, 77f; compartmentalization of, 65n75, 66, 76, 123, 126; in first period (1956-64), 97; God's will as manifest in, 150, 187–8, 196; huduud punishments under, 113-15, 113n89; judges' lack of knowledge of, 151-2; judiciary and party line under Bashir, 131-4; under Nimeiri, 32–3, 88, 110, 112–13, 213; in pre-colonial Sudan, 51, 52n27; replacing common law under Bashir, 11, 120, 126-8, 132-3, 138; teaching in law schools, 120, 126, 135-6; tensions with lawyers trained in common law, 126

Islamic University of Omdurman, 126, 136n45

Jama'at Omdurman al-Islamiyya (Islamic University of Omdurman), 126, 136n45 Juba Justice and Confidence Center, 177-8 Juba University, 136n45, 217 judges, in colonial era. See qadis judicial review of government action, 100-1, 103, 129-30 judiciary. See courts Judiciary Act of 1972, 107 Justice and Confidence Centers, 176-8

Kahn, Paul, 223 al-Khalifa, 52 Khatmiyya Sufi order, 88, 91, 92t, 102, 112 Kitchener, Herbert, 73 Kitchener School of Law at Gordon College, 72-4, 80, 100, 122 Krygier, Martin, 227 kutaab al-'ara'id (petition writers), 19

labor movement, 79, 101, 102 land registry system, 55, 63, 75 land rights, British system for, 62-3 law: and construction of identity, 76–7; defined, 21-2, 21t; effect of access to, on human behavior, 43; postconflict use of, xii, 11; research on civil society actors' knowledge of, 42; symbolic power of, 219; as way to control threats to order, 49 "law of the locality" (qanoon al-maheliyya), 67-8

law schools. See legal education; specific

schools by name



INDEX

law-and-development movement, 158–9, 159n10, 209
lawfare, 24n11
lawlessness, 26, 146, 214, 227
lawyers. See bar association; legal education lawyers' union (niqabat al-muhamiyyin), 123
"Legal Aid Network" funded by UNDP, 176
legal awareness workshops, xi, 173–4, 198–200
legal concepts, 20–5, 21t

legal department (colonial era), 56–7, 56t, 57f; British meddling with, 62; civil division of, 56–8, 57f, 64–5; and mosque construction, 66; and property law, 63; shari'a division of, 65–6

legal education: advancing rule of law, 72-4; during authoritarian regime, 11, 120; bar exam subjects, 142n56; benefit to legal system after Sudan's independence, 95-6; in colonial era, 11, 122; and common law, 98; division created by two leading law schools, 100, 100n50; Ford Foundation funding on programs in non-Western societies, 158-9; humanitarian interventions aimed at promoting, 156-7; number of lawyers produced, 139-42, 139t, 140-41f; number of universities granting law degrees, 136n45, 137m; options available to graduates, 142; postgraduate programs abroad, 158; professors forced to unionize or retire, 133; reform under Bashir, 131, 134-43, 217; useful tool of legal politics, 135. See also specific law schools

legal order: as bulwark against tyranny or genocide, 5; commonality of all regimes in pursuing, 9, 215; defined, 21t, 23–4; in failed states, xiii, 4; as social good, 10, 20

legal order in Sudan: in Bashir regime, 120, 150–4, 217; characterization of, 36–7; extending legal politics, 217; formal law vs. customary law, 36; multiple legal systems combined in, 36–7; urban vs. rural areas, 37, 145, 145n61. See also courts

legal pluralism in Sudan: as challenge, 48, 173; in colonial era, 70, 84; elites knowledgeable across, 12, 96; extreme example of, 32–9, 86–7; fragmentation in court proceedings, 127–8.

See also common law; Islamic law

legal politics: appeal of, 7–10; authoritarian, 25, 121, 203, 217; bottom-up practices of, 4, 201; colonial, 7, 25, 45, 51–74, 80, 119; comparative studies of, 31, 39–43; consequences of, 12–13, 118; defined, 21t, 24–5; in democratic states, 214; in fragile states, 5; humanitarian, 25, 154, 170f, 183–97; imperfect nature of, 11–12; literature review of, 28; omnipresence of, 29; reflections on, 211–15; top-down practices of, 4, 10, 25, 27, 81, 153, 171; and type of regime, 7, 209

legal system, defined, 21t, 22 legal tools and strategies: failure to create progressive social change in weak states, xiii, 12, 15, 27, 222, 225–6; in fragile states, xiii, 3–4, 13, 20, 27–31, 226; legal doctrine as, 24; as malleable resources in competition for political influence, 13, 217, 226, 228; as release valve for social pressures, 9, 229; revealing legal solutions to problems in fragile states, 38

social pressures, 9, 229; revealing legal solutions to problems in fragile states, 38, 222; using for nonlegal ends, dangers of, 26. See also humanitarian legal politics; legal vacuum, 2, 4, 164, 170, 212, 219, 226,

227. See also lawlessness legalism, relation to legal politics, 25n11 legitimacy: of authoritarian rule, 4, 9, 12, 27, 120, 132, 155, 206, 218, 221; of colonial rule, 47, 48, 50–1, 68, 212

Liberia, 220 life expectancy in Sudan, xiv lived experience of the law, 19–20, 28 Local Government (Rural Areas) Ordinance (1937), 68

Locke, John, 188 longitudinal analysis, advantages of, xiii, 26, 41, 42–3, 211–12 Luce, William, 55n35 Lutfi, Jalal Ali, 120, 133–4

mabna al-haqaniyya ("the building of impartiality"), 64
Mahakim al-Jana'iyya al-Sha'abiyya (People's Criminal Courts), 148n70
al-Mahdi, 52, 52n26, 62
Mahdi family as leaders of Umma Party, 91, 92t, 112
al-Mahdi, Sadiq, 112, 116–17, 119
Mahdiyya, 52, 52n27, 53n27
Maliki jurisprudence, 51, 52



INDEX

Mauddathiri, Hassan, 97 Max Planck Institute for Comparative Public Law and International Law (Heidelberg, Germany), 172 Maximos (Alam) v. Khadiga Mohammed El Brigdar (1958), 99 Merry, Sally Engle, 207n67 Milner Report (1921), 68 Ministry of Justice, 96, 157 Mirghani family as leaders of National Unionist Party, 91, 92t, 112 monitoring: of civil society workers, 161, 191-2; of displaced persons, 203-4; of funding intended for humanitarian programs, 206 moral order, law's preference for, 10-11 mosque construction, 66, 212 Mubarak, Hosni, 30, 154 Al-Mufti, Ahmed, 51n19 Muhammad the Prophet's tenets (hadith), 128 Muslim Brotherhood, 92, 92n13, 97, 110, 112, 113 Mustafa, Zaki, 98, 100n49

Napoleonic Code, 107

Nasser, Gamal Abdel, 106, 107, 109

National Congress Party, 165 National Endowment for Democracy, 205 National Islamic Front (NIF), 117 National Records Office, Egypt (Dar al-Watha'ig), 40 "National Salvation Revolution," 117. See also al-Bashir, Omar Hassan National Unionist Party, 91, 92t nationalism leading to independence movements, 78-81 native administration, 68-9, 76 natural disasters in Sudan, 160 nazir (principal chief), 69 "NGOistan" label for Sudan, xiii Nigeria, 47, 68 an-Nimeiri, Jaafar Muhammad: and bar association, 124; coup by, 103-5; ending civil war, 32, 106, 108, 218; foreign legal assistance halted under, 159; "heroic" years of, 108; intifada overthrowing, 115-16; national reconciliation efforts of, 112; nationalization of private businesses by, 111; overhaul of Sudan's legal system by, 32-3, 65n75, 87-8, 102, 107–8, 110–15, 117, 213, 217.

See also second period of independent Sudan (1965–76) niqabat al-muhamiyyin (lawyers' union), 123 nongovernmental organizations (NGOs). See humanitarian actors nonviolent movements, 229

oil industry, 151, 153, 197
older persons as mediators (*ajaweed*), 19
Omdurman Prison, workshops at, 174–5
Operation Lifeline Sudan, 161
ordinances used by colonial and authoritarian regimes, 47, 55, 59, 63, 78, 215
Organization for Economic Cooperation and Development (OECD) countries, assistance from, 3. *See also* international

pan-Arab alliance, 107–8, 118
paralegal training, 175–6
parliament: under Bashir, 216; first period
(1956–64), 93–4; refusal to implement
High Court's order (1966–7), 102,
103–4, 215
Paul, James, 159n10

Ottomans. See Turco-Egyptian rule

peace accords: 2005, xi, xiv, 154, 182, 215, 218; creating openings for civil society interventions, 9, 164; Nimeiri repudiating, 32–3

peacebuilding, 10, 17, 174; church involvement in, 146; by political actors, 38; in relation to rule of law, 22

Penal Code: under Bashir, 126–7; in colonial era, 59; Nimeiri's changes to, 113. See also corporal punishment People's Criminal Courts (Mahakim

al-Jana'iyya al-Sha'abiyya), 148n70 Perham, Marjory, 91 petition writers (kutaab al-'ara'id), 19 Pinochet, Augusto, 216

pluralism. See ethnocultural mix in Sudan; legal pluralism in Sudan

police, 194–5
political influence as most effective way to
resolve problems, 195, 195n39
"political jurisprudence," 28n19
political parties, 80, 91, 92n13.

See also Communist Party; National Congress Party; National Unionist Party; Umma Party



INDEX

the poor: aid programs for, 164; authoritarian and humanitarian legal politics simultaneously in lives of, 219; educating on legal and human rights to empower, 42, 182, 190-1, 198; humanitarian legal programs' failure to alleviate suffering of, 12, 182–3, 197-8, 207-10, 225-6; obstacles in accessing court system, 5, 9, 148, 186; and theory of transformative rights, 189. See also displaced persons postcolonial Sudan: first period (1956-64), 87, 88–102; second period (1965–76), 87, 102–10; survival of state during, 85; third period (1977-89), 87, 110-17 Powers of Nomadic Sheikhs Ordinance (1922), 70Powers of Sheikhs Ordinances (1927–8), 68 precedents, creation of, 98-100, 118

precedents, creation of, 98–100, 118 principal chief (*nazir*), 69 property law: British system, 62–3; in first period (1956–64), 99; under Nimeiri, 65n75. See also land registry system protestors, Bashir's criminal actions against,

Public Grievances and Corrections Board, 146–7, 218 punishment. See corporal punishment; criminal law; Penal Code

qadis (judges), 51, 57, 65, 66, 72, 76 qanoon al-maheliyya ("law of the locality"), 67–8

qanoon september (September law), 113-14

Ranat, Abu (Chief Justice), 95, 96, 100–1 Registrar of Trade Unions, 128 religion: diversity in Sudan, 34–5; grafting of state law to, 212; and human rights, 187–8; and legitimacy of Bashir regime, 150, 196. See also Christianity in Sudan; Islamic law

Republican Brotherhood, 115 research design, 39–43; analysis and coding, 236–7; archival research, 231–5; interviews, 40, 236, 238–47

revolts and coups: Bashir becoming self-proclaimed leader, 117, 119; against colonial power, 49, 60, 77; against military regimes, lawyers' role in, 123–4; Nimieri deposed by coup, 11, 103–5; Nimeiri leading coup, 103–5, 215 rights-based approach to development, xii, 39, 168–79; demand-oriented initiatives, 170, 170f, 171, 173–7, 182, 191; effect of non-Sudanese personnel in positions of authority, 178–9; evaluation needed for, 207; failure to tailor to Sudanese situation, 182; judiciary support from, 171–3; Justice and Confidence Centers, 176–8; Omdurman Prison, rights workshops at, 174–5; and paralegal training, 175–6; rule of law programs, 171; supply-side initiatives, 170–1, 170f, 191; and United Nations Development Programme's initiatives, 171; viewing law as form of development, 179, 181, 209.

See also humanitarian legal politics Robertson, James W., 61n57, 80, 91 Robinson, Mary, 169 Roll of Advocates, 100. See also bar association

rule by law, defined, 21t, 23
rule of law: in colonial era, 11, 44, 46,
47, 53, 59, 75, 211–12; considered
as force for positive change, 2–3, 7,
215; defined, 21t, 22–3; humanitarian
actors integrating into their work, 2, 3,
161–2; ideology as gift of colonialism, 82;
institutionalization of, in fragile states,
13; legal education advancing, 72–4; and
moderation, 2, 48; role of, xii, 2–3, 42,
215; shaped by actors who use it, 5, 222
rural areas, 145, 145n61, 175–6, 227
Russia and human rights for women, 220

sanctions against Sudan, 162–3
al-Sanhuri, Abd al-Razzak, 109, 128
School of African and Oriental Studies of the
University of London, 40
secession of South Sudan, 15, 36, 165, 198,
200, 218. See also South Sudan
second period of independent Sudan
(1965–76), 87, 102–10; court system
in, 105; democratic regime as chaotic
(1964–9), 102, 160; direct humanitarian
interventions in, 156, 159–60; Nimieri's
coup, 103–5; transition from common
law to Egyptian civil law and back again,
102, 107–10, 213
Self-Government Statute (1953), 84, 95n22

Self-Government Statute (1953), 84, 95n2. September law (qanoon September), 113–14 Shakir, Mohamed, 72 shari'a. See Islamic law



INDEX

Sharkey, Heather, 73n100 Sudan National Records Office (Khartoum), Shklar, Judith, 25n11 "shortening the judicial shadow" (taqsir al-zhul Sudan People's Liberation Movement al-aada'i), 120, 143-44n59, 143-50, 144f (SPLM), 130, 163 SLJR. See Sudan Law Journal and Reports Sudan Plantations Syndicate, 50 "slow violence," 27 Sudan Political Service (SPS, British colonial social stability. See stability created by legal rule), 44; background of members of, system 54, 54n30; "benevolent despotism" of, Socialist Party, 104 53-8, 119, 212; claims filed with, 64; on Somalia and rule of law, 221 devolution of court system, 71-2; dual South Africa, 30, 47, 216 allegiance of, 61, 61n57, 82; duration of South Sudan: Bashir agreeing to separation posting in Sudan, 61n57; and education, of, 153, 218; civil society in, 161; 74, 74n106; governmental departments common-law legal system in, 38n45; created by, 55-6, 56t; local officials' English as language of law in, 152; powers under, 68-9; mind-set of, 54-5; interviews conducted by author in, 40; and mosque administration, 66-7; and law school in, 217; ongoing conflict with, native administration, 68-9, 76; and 33; statehood of, 15, 227 shari'a, 56-7 southern Sudan: British using different Supreme Court of South Sudan, 171 Supreme Court of Sudan, 130, 132, 171. approach to native administration in, 70; Christian missionaries in, 34, See also High Court symbolic benefits of law-building programs, 34n37, 70, 94n20; civil war with, xiv, 32; 12-13, 207, 209 criminal laws enforced in, 150; direct humanitarian interventions in, 161; symbolic power of law, 219, 223 Islam promotion in, 94n20; "Justice and Confidence Centers" in, 176-7; law Taha, Mahmoud Mohammed, 36n43, 115-16, of, outside scope of book, 38n45; and 196n40 university education, 74. See also civil taqsir al-zhul al-qada'i ("shortening the judicial shadow"-expanding courts under Soviet Union and control of judges, 29 Bashir), 120, 143-44n59, 143-50, 144f SPLM (Sudan People's Liberation taxation, 50, 68, 69, 145 Movement), 130, 163 tenancy rights, 50, 50n16 SPS. See Sudan Political Service Tenenbaum, Elcana, 157n3 third period of independent Sudan (1977-89), stability created by legal system, 48-9, 59-63, 75, 83, 119, 223 87, 110-17; autocratic rule of Nimeiri stare decisis, 98-100, 118 during, 113; direct humanitarian state building, Western-style, 156, 214 interventions in, 156; instability in, 116strikes, 79, 101, 115, 124 17; Islamic law, imposition of, 88, 110, Sudan: as "failed" state, 2, 2n2; geographic 112-13; transition to democracy (1985-6), 115-16. See also al-Mahdi, Sadiq and ethnocultural makeup, 34-5, 90n8; historical background of, 15, 35-6; life Thompson, E. P., 223-4, 229 expectancy in, xiv; as "most fragile" top-down application of legal politics, 4, 10, state, 2n2; overview of conflict in, 32–3; 25, 27, 81, 153, 171 research conducted in, 39; sanctions tort procedure: civil code redrafted in against, 162-3. See also specific time Egyptian style, 107; in colonial era, 59, periods and rulers 80, 80n123; in first period (1956-64), 98; Sudan Bar Association. See bar association under Nimeiri, 65n75 Sudan Human Rights Organization, 124, 192 trade unions, 79, 101, 102, 104, 115, 124, Sudan Law Journal and Reports (SLJR), 100, 128, 160 133, 159 al-Turabi, Hassan, 112, 117, 119, 131, 224 Sudan Law Project, funded by Ford Turco-Egyptian rule (1821–84), 35, 52, Foundation, 159 52n24, 221



INDEX

Umma Party, 86, 91, 92t, 102, 112, 117 unions. See trade unions
United Nations: assistance for rule-of-law development, xii, 3, 19; on
Darfur conflict, 33; and elites, 225; generic programming of, 171–2, 207; international aid groups in Sudan from, 166–7, 166t, 167n22; NGOs framing programs in human rights language to

166–7, 166t, 167n22; NGOs framing programs in human rights language to obtain funding from, 201; rights-based development approach of, xii, 3, 39, 168–79; Rule of Law Unit, 3; Sudan joining upon independence, 90n8

United Nations–African Union Mission in Darfur (UNAMID), 167n22

United Nations Development Programme, xi, 39, 164, 167, 171, 173, 176, 221

United Nations Mission in Sudan (UNMIS), 164, 167n22, 181

University of Hargeisa, 221

University of Khartoum: and British legacy, 74, 80n123, 98, 156; common-law-trained lawyers from, under Bashir, 138; curriculum, 135, 157; English common law as focus of, 98, 100; faculty, 132, 157; legal profession influenced by, 122–3; library as data

source, 39; prestige of, 109n78, 122; relationship with University of London, 122, 157; teaching in Arabic, 136; tensions with graduates of *shari'a* schools, 126

University of London, 122, 157

urf (customs) of Maliki school, 51

U.S. Agency for International Development
(USAID), 158, 166t

U.S. sanctions against Sudan, 162–3

violence and volatility: in authoritarian regimes, 36; law serving in spite of itself, 10, 27; legal tools adopted in times of, 6; "slow violence," 27. See also revolts and coups

Watson, James, 62 women: corporal punishment for dress violations, 203; in displaced persons camps, 194–5; and legal awareness workshops, 199; Omdurman Prison, rights workshops at, 174–5; and reproductive health clinic, 192; women's groups in post-Soviet Russia, 220 Woodward. Peter. 118

World Bank assistance, xii, 3, 19, 39, 166t